

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

LUFKIN DIVISION

BLAZE HICKS

§

VS.

§

CIVIL ACTION NO. 9:19-CV-212

BRYAN SEALES, ET AL.

§

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Blaze Hicks, a prisoner previously confined at the Tyler County Jail, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Brad Seales, Kerry Perry, and Donald Calhoun.

The court referred this matter to the Honorable Christine L. Stetson, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends denying Defendants' Motion for Summary Judgment for Failure to Exhaust Administrative Remedies.

The court has received and considered the Reports and Recommendations of United States Magistrate Judge filed pursuant to such order, along with the record and the pleadings. Defendants filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit.

In support of their argument that Plaintiff did not appeal administrative remedies before filing this action, Defendants rely on the affidavit of Sheriff Weatherford, in which he states that "Blaze

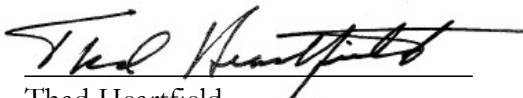
Hicks did not appeal any grievances regarding the matters about which he complains in this lawsuit before he filed litigation. Additionally, it does not appear that Blaze Hicks has ever appealed any grievance.” (Doc. #84-2 at 3.) Although Sheriff Weatherword states that he reviewed 594 pages of documents produced by the Defendants, there is no indication in the summary judgment record what those documents are. In addition, the Exhibit List submitted by Defendants (doc. #100 at 1) reflects that Defendants have 7 pages of Plaintiff’s grievance records, but those grievances were not submitted as exhibits to the Motion for Summary Judgment. Thus, it is impossible for the court to determine the subject matter of those grievances, when they are dated, and whether they contain a response that Plaintiff could have appealed. Finally, the affidavits at issue in the cases cited by Defendants in their objections contain far more factual content than the conclusory affidavit submitted by Defendants here.

Based on the record before the court, there is a genuine issue of material fact regarding exhaustion. Therefore, the magistrate judge correctly concluded that Defendants’ Motion for Summary Judgment should be denied.

ORDER

Accordingly, Defendants’ objections (doc. #109) are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge (doc. #104) is **ADOPTED**. Defendants’ Motion for Summary Judgment (doc. #84) is **DENIED**.

SIGNED this the 23 day of September, 2022.


Thad Heartfield
United States District Judge